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United States of America

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL JOSEPH ORTEGA,

Defendant.

CASE NO. 1:20-CR-118-JLT-SKO

STIPULATION REGARDING EXCLUDABLE
TIME PERIODS UNDER SPEEDY TRIAL ACT;
ORDER

DATE: June 1, 2022
TIME: 1:00 p.m.
COURT: Hon. Sheila K. Oberto

On May 13, 2020, this Court issued General Order 618, which suspends all jury trials in the Eastern District of California until further notice. This General Order was entered to address public health concerns related to COVID-19. Further, pursuant to General Order 614, 620, 624, 628, and 630 and the CARES Act, this Court's declaration of judicial emergency under 18 U.S.C. § 3174, and the Ninth Circuit Judicial Council's Order of April 16, 2020, continuing this Court's judicial emergency, this Court has allowed district judges to continue all criminal matters to a date after May 1, 2020.¹

Although the General Order addresses the district-wide health concern, the Supreme Court has emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive openendedness with procedural strictness," "demand[ing] on-the-record findings" in a particular case.

¹ A judge "may order case-by-case exceptions" at the discretion of that judge "or upon the request of counsel, after consultation with counsel and the Clerk of the Court to the extent such an order will impact court staff and operations." General Order 618, ¶ 7 (E.D. Cal. May 13, 2020).

1 *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no
 2 exclusion under” § 3161(h)(7)(A). *Id.* at 507. And moreover, any such failure cannot be harmless. *Id.*
 3 at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
 4 judge ordering and ends-of-justice continuance must set forth explicit findings on the record “either
 5 orally or in writing”).

6 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
 7 and inexcusable—General Orders 611, 612, 617, 618, and 620 and the subsequent declaration of judicial
 8 emergency require specific supplementation. Ends-of-justice continuances are excludable only if “the
 9 judge granted such continuance on the basis of his findings that the ends of justice served by taking such
 10 action outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C. §
 11 3161(h)(7)(A). Moreover, no such period is excludable unless “the court sets forth, in the record of the
 12 case, either orally or in writing, its reason or finding that the ends of justice served by the granting of
 13 such continuance outweigh the best interests of the public and the defendant in a speedy trial.” *Id.*

14 The General Orders and declaration of judicial emergency exclude delay in the “ends of justice.”
 15 18 U.S.C. § 3161(h)(7) (Local Code T4). Although the Speedy Trial Act does not directly address
 16 continuances stemming from pandemics, natural disasters, or other emergencies, this Court has
 17 discretion to order a continuance in such circumstances. For example, the Ninth Circuit affirmed a two-
 18 week ends-of-justice continuance following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d
 19 764 (9th Cir. 1981). The court recognized that the eruption made it impossible for the trial to proceed.
 20 *Id.* at 767-68; *see also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to
 21 exclude time following the September 11, 2001, terrorist attacks and the resultant public emergency).
 22 The coronavirus is posing a similar, albeit more enduring, barrier to the prompt proceedings mandated
 23 by the statutory rules.

24 In light of the societal context created by the foregoing, this Court should consider the following
 25 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-
 26 justice exception, § 3161(h)(7) (Local Code T4).² If continued, this Court should designate a new date
 27

28 ² The parties note that General Order 612 acknowledges that a district judge may make
 “additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.

for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be “specifically limited in time”).

STIPULATION

Plaintiff United States of America, by and through its counsel of record, and defendant, by and through defendant’s counsel of record, hereby stipulate as follows:

1. By previous order, this matter was set for status on June 1, 2022.

2. By this stipulation, defendant and government now move to continue the status conference until October 19, 2022, and to exclude time between June 1, 2022, and October 19, 2022, under Local Code T4.

3. The parties agree and stipulate, and request that the Court find the following:

a) The government has represented that initial discovery in this case includes investigative reports and photographs. A portion of this discovery has been either produced directly to counsel and/or made available for inspection and copying. The government is in the process of making additional discovery available to the defense.

b) Counsel for defendant desires additional time to review discovery, conduct investigation, and engage in plea negotiations.

c) Counsel for defendant believes that failure to grant the above-requested continuance would deny him/her the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

d) The government agrees with the continuance request and does not object to the continuance.

e) The parties will set the matter for change of plea or trial at the next hearing.

f) Based on the above-stated findings, the ends of justice served by continuing the case as requested outweigh the interest of the public and the defendant in a trial within the original date prescribed by the Speedy Trial Act.

g) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161, Cal. March 18, 2020).

et seq., within which trial must commence, the time period of June 1, 2022 to October 19, 2022, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4] because it results from a continuance granted by the Court at defendant's request on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

4. Nothing in this stipulation and order shall preclude a finding that other provisions of the Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial must commence.

IT IS SO STIPULATED.

Dated: May 25, 2022

PHILLIP A. TALBERT
United States Attorney

/s/ LAUREL J. MONTOYA
LAUREL J. MONTOYA
Assistant United States Attorney

Dated: May 25, 2022

/s/ JOHN F. GARLAND
JOHN F. GARLAND
Counsel for Defendant
MICHAEL JOSEPH ORTEGA

ORDER

The parties shall be prepared to select a mutually agreeable trial date at the next status conference.

IT IS SO ORDERED.

DATED: 5/27/2022

Sheila K. Oberto
THE HONORABLE SHEILA K. OBERTO
UNITED STATES MAGISTRATE JUDGE